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 EXAMINER

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ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**Application No.  
**08/899,434**

Applicant(s)

**Johnson**

Examiner

**Linda L. Gray**

Group Art Unit

**1734** Responsive to communication(s) filed on 12-20-99. This action is **FINAL**. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims** Claim(s) 1-3 and 8-15 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

 Claim(s) \_\_\_\_\_ is/are allowed. Claim(s) 1-3 and 8-15 is/are rejected. Claim(s) \_\_\_\_\_ is/are objected to. Claims \_\_\_\_\_ are subject to restriction or election requirement.**Application Papers** See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner. The proposed drawing correction, filed on 12-20-99 is  approved  disapproved. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119** Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All  Some\*  None of the CERTIFIED copies of the priority documents have been received. received in Application No. (Series Code/Serial Number) \_\_\_\_\_. received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

 Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)** Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152**--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---**

## **DETAILED ACTION**

### **Oath/Declaration**

1. The declaration filed 12-20-99 is defective. A new declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required, MPEP §602.01 and §602.02. The declaration is defective because it does not reference all three provisional applications.

### **Priority**

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows: The second application (which is called a continuing application) must be an application for a patent for an invention which is also disclosed in the first application (the parent or provisional application). The disclosure of the invention in the parent application and in the continuing application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112, *In re Ahlbrecht*, 168 USPQ 293 (CCPA 1971).

Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for and 8-14 of this application. Support is not found for the limitations directed to the vacuum belt means (claims 9-11 and 13-14), the tape cutter assembly (claim 12), and ultrasonic sealing (claim 8).

### **Claim Rejections - 35 USC § 112**

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. **Claims 1-3 and 8-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.**

**Claims 1, 9, and 13** indicate means for delivering tensioned tape from the means for dispensing the tape to the tape applicator apparatus. However, the tape applicator apparatus is the portion of the apparatus which applies the cut pieces of tape, cut from the tensioned web, to the web for sealing thereto by the tape sealing mechanism. Thus, the means for delivering the tensioned tape cannot be for delivering such to the tape applicator apparatus.

### **Claim Rejections - 35 USC § 103**

**5. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. (5,776,045) in view of Kanemitsu et al. (US 5,400,568) and Schroth et al. (4,608,115).**

**Claim 1**, Bodolay et al. teach an apparatus for dispensing, applying, and sealing individual fastener profiles 57 across a portion of web 14 including **(a)** dispensing means 32 for web 34 of a fastener profile, **(b)** tape cutting assembly 36 for cutting web 34 into profiles 38 which are later heated to become profiles 57, **(c)** belt means 40 for advancing profiles 38/57 into a position across web 14, **(d)** applicator apparatus including sealing mechanism 28 for applying pressure and heat to profiles 57 to seal profiles 57 to web 14, and **(e)** means 22 for sequentially advancing web 14. The combination of web 14 and profiles 57 is then sent to a machine for forming, filling, and closing a reclosable bag (c 3, L 12, to c 7, L 15).

*The difference between Bodolay et al. and claim 1 is that Bodolay et al. do not teach **(a)** that web 34 is, instead of just a fastener profile, a tape having profiles 38 thereon such that assembly 36 cuts the tape into sections and the tape is sealed to web 14, **(b)** that web 14 is thermoplastic, **(c)** that means 40 also includes a vacuum, and **(d)** a means to tension the tape as it is removed from dispensing means 32, including a registration assembly and a drive assembly.*

Kanemitsu et al. teach that the use of lips 2C and 3C facilitates a proper adjustment of the intermeshing strength of items 2B and 2C as well as other important properties of the assembly (c 1, L 9-17; c 6, L 10-64; c 9, L 23, to c 13, L 38).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that web 34 is, instead of just a fastener profile, a tape having profiles 38 thereon such that assembly 36 cuts the tape into sections and the tape is sealed to web 14 because Kanemitsu et al. teach that the use of lips under a fastener assembly facilitates a proper adjustment of the intermeshing strength of items of the assembly that interlock as well as other important properties of the assembly.

For **(b)**, be thermoplastic storage bags having a reclosable opening are conventional because such are easily bonded to the closure by heat. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that web 14 is thermoplastic because storage bags having a reclosable opening are conventional because such are easily bonded to the closure by heat where heat is used on Bodolay et al. for bonding.

For **(c)**, Schroth et al. teach delivering cut pieces of web 16/18 to a bonding station to apply such to web 22. The pieces are delivered on roll conveyor 4 which includes a vacuum to help keep the pieces

in place (c 4, L 41, to c 5, L 26; c 10, L 49, to c 12, L 10).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that means 40 also includes a vacuum because Schroth et al. teach using a vacuum with a conveyor to help hold cut pieces of a web in position such that a vacuum included in means 40 will operate to enhance securement of profiles 38/57 to means 40.

For (d), it is conventional provide a means to tension a continuous web material as such is deliberately removed from a supply means in order to prevent the material from sagging during delivery -- causing a detrimental effect on the cutting and delivery process -- where the means to tension controls the position of the web and pulls the web for delivering. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. a means to tension the tape as it is removed from dispensing means 32, including a registration assembly and a drive assembly, as is conventional in the art of delivering continuous web material from a supply to prevent sagging during delivery -- causing a detrimental effect on the cutting and delivery process.

With respect to the claim limitation that the tape is thermoplastic, it is conventional to use thermoplastic tape when heat and pressure sealing such to a thermoplastic material such that the two thermoplastics will intermingle well at the sealing sight. It would have been obvious to person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., in view of Kanemitsu et al., that the tape is thermoplastic such that the tape and web 14 will intermingle well at the sealing sight.

**Claim 8**, Bodolay et al. teach sealing the distal ends of profiles 38 after cutting and before application to web 14 such that sealing in this manner would still occur even if profiles 38 are supported on a tape.

**6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Kanemitsu et al. and Schroth et al. as applied to claims 1 and 8 above, and further in view of Rajala (5,659,229).**

**Claim 2**, Bodolay et al., modified, teach, for the means for dispensing, pivotally mounting the tape on unwind reel 32 and pulling from reel 32 by a drive including motors 35 and 37 where motors 35 and 37 control tension (c 4, L 32-37).

*The difference between claim 2 and Bodolay et al., modified, is that Bodolay et al., modified, do not teach that reel 32 is powered and a tension arm holding the tape which rises and falls in response to tension in the tape where the unwind speed of reel 32 occurs in response to this rise and fall.*

Rajala teaches reel 12 which is powered by motor 14 and tension arm 24 holding web 18 which rises and falls in response to tension in web 18 where the unwind speed of reel 12 occurs in response to this rise and fall (c 7, L 32 to c 8, L 8).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that reel 32 is powered and a tension arm holding the tape which rises and falls in response to tension in the tape where the unwind speed of reel 32 occurs in response to this rise and fall because Rajala teaches that such allows one to accurately control tension in a continuously moving web, where the web of Bodolay et al., modified, is continuously moving, and it is obvious to replace one means of dispensing and tension control (Bodolay et al., reel 32 with motors 3 and 37) with another are recognized means for dispensing and tension control (Rajala).

**7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Kanemitsu et al. and Schroth et al. as applied to claims 1 and 8 above, and further in view of Martin (3,659,767).**

*Claim 3, the difference between claim 3 and Bodolay et al., modified, is that Bodolay et al., modified, does not teach that the means for tensioning the tape occurs using dancer rollers and a film synchronizer of one or more vertically adjustable rollers which adjust in response to the tension and the pulling is caused by nip rollers in response to the position of the dancer rollers and the adjustable roller(s).*

Martin teaches advancing a web from roll 16 where advancing includes a means for tensioning the web including a dancer roller 42 and film synchronizer 32 of vertically adjustable roller 70 (or more than one roller) which adjust in response to the tension and the pulling is caused by nip rollers 46, 46, and 50 in response to the position of rollers 42 and 52 in that such responds to roller 52 which responds to tension changed by roller 42 (c 2, L 20, to c 6, L 14).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the tensioning occurs using dancer rollers and a film synchronizer of one or more vertically adjustable rollers which adjust in response to the tension and the pulling is caused by nip rollers in response to the position of the dancer rollers and the adjustable roller(s) because Martin teaches that such allows one to accurately control tension in a continuously moving web, where the web of Bodolay et al., modified, is continuously moving, and it is obvious to replace one means of tension control (Bodolay et al., modified) with another are recognized means for tension control (Martin).

With respect to the claim limitation of using more than one dancer roll, MPEP §2144.04(f) refers to *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) which indicates that the mere duplication of parts (i.e., more than one dancer roll) has no patentable significance unless a new and unexpected result is produced, and it would have been obvious to a person of ordinary skill in the art at the time the invention

was made to have provided in Bodolay et al., modified, two or more dancer rollers because the duplication of parts requires only ordinary skill in the art and is a matter of routine expedients.

**8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Kanemitsu et al. and Schroth et al. as applied to claims 1 and 8 above, and further in view of Kühnhold et al. (5,413,656).**

*Claim 12, the difference between Bodolay et al., modified, and claim 12 is that Bodolay et al., modified, does not teach specifics of assembly 36. Specifically, Bodolay et al., modified, do not teach that assembly 36 includes an air piston mechanism having a shaft that moves in and out by the piston, a blade and clamp on the shaft for cutting and clamping the tape, and a slideable die on the opposite side of the tape having a slot and a spring loaded stripper near the slot where the clamp pushes on the stripper during cutting where the stripper pushes back after cutting.*

Kühnhold et al. teach web cutting assembly 10 including a mechanism (box below shaft 15) having shaft 15 that moves in and out by the mechanism, blade 14 and clamp 17/18 on shaft 15 for cutting and clamping web 4, and die 9 on the opposite side of web 4 having a slot and stripper 11/12 near the slot where clamp 17/18 pushes on stripper 11/12 during cutting (c 2, L 66, to c 3, L 35).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that assembly 36 includes a mechanism having a shaft that moves in and out by the mechanism, a blade and a clamp on shaft for cutting and clamping the tape, and a die on the opposite side of the tape having a slot and stripper 11/12 near the slot where the clamp pushes on the stripper during cutting because Kühnhold et al. teach that such is conventional in the art of cutting a continuous web and it is obvious to replace one cutting means (Bodolay et al., modified, specifics undisclosed) with another art recognized cutting means (Kühnhold et al.) used for the same purpose of cutting a continuous web. Although assembly 10 of Kühnhold et al. only perforates, Bodolay et al. teaches complete cutting which therefore dictates that complete cutting will still occur, not perforating, even after modification since one skilled in the art would not destroy the process of Bodolay et al. by perforating.

With respect to the claim limitations of the shaft moving mechanism being an air piston and the die being slideable with a spring loaded stripper, air pistons are conventional in the art as a means for moving a knife to-and-fro for cutting, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the shaft moving mechanism is an air piston because it is obvious to replace one shaft moving mechanism (Bodolay et al., modified) with another art recognized shaft moving mechanism (air piston). Also, slideable dies with a spring loaded stripper are conventional for ensuring that the die pushed back well against the knife and clamp to ensure a clean cut and clean separation of the knife from the web, and it would have been obvious to a person of

ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the die is slidable with a spring loaded stripper to ensure that the tape is cut cleanly and that the tape is cleanly separated from assembly 36.

**9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Bois (5,884,452) and Schroth et al.**

Claim 8 does not receive priority as discussed in paragraph 2 above. The above discussion of Bodolay et al. applies herein. Also, Bodolay et al. teach sealing the distal ends of profiles 38 after cutting and before application to web 14 such that sealing in this manner would still occur even if profiles 38 are supported on a tape.

*Bodolay et al. do not teach (a) that web 34 is, instead of just a fastener profile, a tape having profiles 38 thereon such that assembly 36 cuts the tape into sections and the tape is sealed to web 14, (b) that web 14 is thermoplastic, (c) that means 40 also includes a vacuum, and (d) a means to tension the tape as it is removed from dispensing means 32, including a registration assembly and a drive assembly.*

For (a), Bois teaches an apparatus for dispensing, applying, and sealing web 3 of a fastener profile to web 1 to make a reclosable bag, as shown in Figure 1, and Bois considered this teaching to be prior art to the disclosed invention in the patent. Bois further teaches the use of web 3 of a fastener profile to be very difficult to operate -- requiring regular attention (c 1, L 14-51). As an improvement, Bois teaches attaching an individual piece of tape to the web used to make the bag, before filling, where the pieces of tape have a fastener profile thereon. Thus, Bois teaches tape/fastener-sections as an improvement of fasteners alone (c 1, L 56, to c 4, L 3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that web 34 is, instead of just a fastener profile, a tape having profiles 38 thereon such that assembly 36 cuts the tape into sections and the tape is sealed to web 14 because Bois teaches that tape/fastener-sections are an improvement over fasteners alone, where Bodolay et al. teach fasteners alone, where the combination will provide for a less difficult operation requiring less attention as suggested by Bois, and it is obvious to replace one fastener profile (Bodolay et al., fastener profile alone) with another art improved fastener profile (tape/fastener-section, Bois).

For (b), Bois teaches web 1 to be thermoplastic (c 1, L 59-66).

It would have been obvious to a person of ordinary skill in the art at the time the invention was

made to have provided in Bodolay et al. that web 14 is thermoplastic because Bois teaches in the same art that such a web material is conventional and it is obvious to replace one web material (Bodolay et al., material of web 14 not disclosed) with another art recognized web material (Bois, thermoplastic) used for the same purpose (to made a reclosable bag therefrom).

For (c ), Schroth et al. teach delivering cut pieces of web 16/18 to a bonding station to apply such to web 22. The pieces are delivered on roll conveyor 4 which includes a vacuum to help keep the pieces in place (c 4, L 41, to c 5, L 26; c 10, L 49, to c 12, L 10).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that means 40 also includes a vacuum because Schroth et al. teach using a vacuum with a conveyor to help hold cut pieces of a web in position such that a vacuum included in means 40 will operate to enhance securement of profiles 38/57 to means 40.

For (d), it is convention provide a means to tension a continuous web material as such is deliberately removed from a supply means in order to prevent the material from sagging during delivery -- causing a detrimental effect on the cutting and delivery process -- where the means to tension controls the position of the web and pulls the web for delivering.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. a means to tension the tape as it is removed from dispensing means 32, including a registration assembly and a drive assembly, as is conventional in the art of delivering continuous web material from a supply to prevent sagging during delivery -- causing a detrimental effect on the cutting and delivery process.

With respect to the claim limitation that the tape is thermoplastic, it is conventional to use thermoplastic tape when heat and pressure sealing such to a thermoplastic material such that the two thermoplastics will intermingle well at the sealing sight. It would have been obvious to person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., in view of Bois, that the tape is thermoplastic such that the tape and web 14 will intermingle well at the sealing sight.

**10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Bois and Schroth et al. as applied to claim 8 above, and further in view of Kühnhold et al.**

*Claim 12, the difference between Bodolay et al., modified, and claim 12 is that Bodolay et al., modified, does not teach specifics of assembly 36. Specifically, Bodolay et al., modified, do not teach that assembly 36 includes an air piston mechanism having a shaft that moves in and out by the piston, a blade*

*and clamp on the shaft for cutting and clamping the tape, and a slidable die on the opposite side of the tape having a slot and a spring loaded stripper near the slot where the clamp pushes on the stripper during cutting where the stripper pushes back after cutting.*

In view of Kühnhold et al., it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that assembly 36 includes a mechanism having a shaft that moves in and out by the mechanism, a blade and a clamp on shaft for cutting and clamping the tape, and a die on the opposite side of the tape having a slot and stripper 11/12 near the slot where the clamp pushes on the stripper during cutting because Kühnhold et al. teach that such is conventional in the art of cutting a continuous web and it is obvious to replace one cutting means (Bodolay et al., modified, specifics undisclosed) with another art recognized cutting means (Kühnhold et al.) used for the same purpose of cutting a continuous web. Although assembly 10 of Kühnhold et al. only perforates, Bodolay et al. teaches complete cutting which therefore dictates that complete cutting will still occur, not perforating, even after modification since one skilled in the art would not destroy the process of Bodolay et al. by perforating.

With respect to the claim limitations of the shaft moving mechanism being an air piston and the die being slidable with a spring loaded stripper, air pistons are conventional in the art as a means for moving a knife to-and-fro for cutting, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the shaft moving mechanism is an air piston because it is obvious to replace one shaft moving mechanism (Bodolay et al., modified) with another art recognized shaft moving mechanism (air piston). Also, slidable dies with a spring loaded stripper are conventional for ensuring that the die pushed back well against the knife and clamp to ensure a clean cut and clean separation of the knife from the web, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the die is slidable with a spring loaded stripper to ensure that the tape is cut cleanly and that the tape is cleanly separated from assembly 36.

### **Allowable Subject Matter**

**11. Claims 9-11 and 13-14 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action.**

**Claim 15 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.**

**12.** The following is a statement of reasons for the indication of allowable subject matter: **Claim 15**, the prior art of record does not teach or suggest that the tape carrying the fastener profiles includes a folded loop having the fasteners attached to the inner surface.

**13.** Since allowable subject matter has been indicated, Applicant is encouraged to submit formal drawings in response to this Office action. The early submission of formal drawings will permit the Office to review the drawings for acceptability and to resolve any informalities remaining therein before the application is passed to issue. This will avoid possible delays in the issue process.

As allowable subject matter has been indicated, Applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with, 37 CFR 1.111(b) and MPEP §707.07(a).

### **Response Section**

**14.** Applicant's response filed 12-20-99 has been considered. The amendment to page 50 has not been entered because the wrong page is recited. Applicant's comment concerning claims for priority under 35 U.S.C. 119(e) are noted, and paragraph 2 above has been revised not to include claim 1.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper, *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the combination of Bodolay et al. with Bois does not refer to Applicant's disclosure but relies upon a teaching in Bois that tape/fastener-sections are an improvement over fasteners alone where Bodolay et al. teach fasteners alone.

It is granted that Bois applies closures longitudinally and that the claims apply the closures across the web; however, Bois is not the primary reference. The primary reference is Bodolay et al. which applies closures across the web. Bois is applied to suggest using tape/fastener-sections in the process of Bodolay et al. such that the tape/fastener-sections will be applied across the web in Bodolay et al. modified by Bois.

**Conclusion**

**15.** Any inquiry concerning this communication or earlier communications should be directed to Examiner Linda L. Gray at (703)308-1093, Monday-Friday from 8:00 am to 4:30 pm. The necessary fax numbers are (703)305-7718 (official faxes), (703)305-7115 (unofficial faxes), and (703)305-3599 (faxes after final Office action).

llg llg  
February 28, 2000

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